

Researching Scottish Ancestors

Class 4: Other Scottish Records

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It's natural to want to work with the records that we find most familiar and that are searchable online such as civil, church, and census records. However, there are many other resources that can assist you in researching your Scottish ancestors.

Wills & Testaments

Wills and testaments are similar to what we refer to as probate records in the United States, however, due to the laws of inheritance in Scotland they are not as useful as their American counterparts. They often do not list names of relatives and up until 1868 the testator could only include what is known as moveable property (i.e., things that can be picked up and moved).

The laws of inheritance control much of who and how individuals receive their inheritance. The law of primogeniture (the eldest son inherits) was in effect from 1868 to 1964. If there was no son, then the eldest daughter could inherit. This eldest child inherited the *heritable moveable property* (land, buildings, any other immovable property). All the other children received an equal share of the moveable estate (money, animals, jewelry, tools, furniture, and so forth).

The moveable property is often referred to in the testament as "*goods, gear, sums of money and debts.*"

There is a maximum of three parts into which the moveable property can be divided:

1. *Jus relicate* – the one-third that goes to the widow
2. *Legitim* – the one third that goes to the *bairns* (the children) to split equally, with the exception of the eldest
3. *Deids* – the part of the moveable property that the deceased can stipulate how it is to be disposed

Obviously, a lack of a widow or children can alter how the moveable property is distributed, but if there is a widow and children, those two-thirds are automatically confirmed and the only part that the executors must handle is usually that which is written in the *deids*. If there are no widow or children, then the deceased brothers and sisters are considered the nearest next of kin for distribution.

Land Records

Land records are often more helpful than testaments in that they often list people by name and may include how a person has come to have the right to sell the land. Up until 2004, Scotland had a feudal system, in which the land was in theory owned by the Crown. Ownership was passed to immediate

vassals. In the early years, the land was granted as payment for military duty. Eventually payment of *tiends* (also known as tithes) of produce or money replaced the military service.

With the feudal system, the heirs did not automatically inherit the land. When it comes to land, there are some important terms to understand:

- *Heritable immoveable property*: the land under the ownership of a vassal
- *Retours of services of heirs*: the return of the jury who determines the rightful heir, which then goes to the Royal Chancery
- *Clare Constat*: means “clearly shows” and was a system used by subject superiors to their own vassals to inherit

The Retours of Services to Heirs are found in the records of Chancery at the National Records of Scotland centre. The abridgements and index created by Thomas Thomson in 1811 and 1813 are usually sufficient to understand the retour, though for the retours up to 1699, the abridgements include the reference to the volume and page of the original retours.

- *A.E. (antique extentis)*: Old Extent (worth), used in showing the change in the Scottish pound
- *N.E. (novellus extentis)*: New Extent (worth), used in showing the change in the Scottish pound
- *Merk*: a value of money; 1 merk = $\frac{2}{3}$ Pound Scots

Sasine registers are another valuable resource when tracing land. The register takes its name from *sasine* which means to *seize*, as landholders were seized of the land (physically holding the land). Before 1617, the sasines were handled by notaries. After 1617 came the creation of the Register of Sasines. These records include changes in ownership as well as details about secured debt up until 1981.

Before 1781 the sasine registers are incomplete and some counties have missing volumes. After 1781, indexes are good and there are also printed abridgements by county. They are usually recorded within a few days of being drawn up, except for a sole heir who is already residing on the premises. In such a case, the heir only needs to register the sasine if his possession of the property was questioned or if he was going to sell the property. In selling, he would have to prove he had the right to sell the said property.

ScottishIndexes.com has an index to the Particular Register of Sasines for the counties of Roxburgh, Selkirk, and Peebles for 1780 searchable on their site. There are microfilmed records that have been digitized through FamilySearch.org (available via Family History Centers or through FamilySearch auxiliary libraries) that can assist you for other locations and years. In addition to the minute book, which has the “highlights” from the sasine record, you may also find the original sasine registers available on FamilySearch.org as well (with the same viewing limitations).

Tip: If you are unsure of the abbreviations and the Latin in the various land records, Bruce Durie's Scottish Genealogy can help!

Court Records

Understanding Scottish court records does require some understanding of Scotland's legal history. Scottish law differs from the laws of England and Wales, even after the Union of 1707 which formed the three countries into Great Britain.

There is both *statutory law* and *common law* that results in the laws to which Scotland adheres. Generally speaking, statute/statutory law trumps common law. Statute law comes from those bodies that possess legislative powers and include royal proclamations, acts of Parliament, European community treaties and the like. Common law from the judgments of the courts and is based on Scots legal tradition. It relies on precedent and can be traced to both Roman law and Canon law.

The various court records cover criminal and civil cases as well as wills. These records can be quite valuable to family historians as they often include information about birth, residence, relatives, and more. Criminal courts handled cases in which an individual or individuals have come up against the law. Civil courts handle cases in which an individual is against another individual. Both sets of courts have a hierarchy:

| Criminal Courts | Civil Courts |
|--|---|
| <ul style="list-style-type: none">• High Court of Justiciary (highest court)• Sheriff Court• District Court (lowest court) | <ul style="list-style-type: none">• Supreme Court (previously House of Lords in London) (highest court)• Court of Session• Sheriff Court (lowest court) |

Tip: There are many specialty courts depending on the period, types of offenses, and those for the enforcement of the use of arms and the right to use certain names and titles.

The established church, the Presbyterian Church, had a group that acted as a church court. The minutes of that group are the *Kirk sessions*. The Kirk was responsible for poor relief and education. Their records include the very useful minute books that detail not only those who may have needed poor relief, but also those who perhaps had broken a tenant of the faith—often the birth of an illegitimate child. Accounts and financial records may also offer insight into those who may have been helped out financially. And for the Free Church there was the Deacons' Court.

The kirk sessions are available on ScotlandsPeople, but it is best to use ScotlandsPlaces to ensure you are searching in the correct parish. The kirk session books are not name searchable. You must browse the

records, though they have included a “contents” to each register that help you isolate a particular year. If you find a record of interest, then you can download an unwatermarked version of the page in question.

Court records would also be the likely place to look for *adoption records* except that the legality of adoption is a relatively modern idea in Scotland. The first law dealing with adoption was the passage of the Adoption of Children (Scotland) Act of 1930. For those adoptions after the passage of the act, they are arranged through the Sheriff Courts of the area in question.

Before 1930, adoptions were handled as private affairs and may have been handled by places like Barnardos or Quarriers—two organizations that were begun in the 1800s to look after the welfare of children.

Informal adoptions may be noted in birth records and census records.

Military Records

The year 1707 plays a major importance when it comes to military records. Prior to 1707 Scotland had its own military and they were called up as needed and dismissed afterwards. In 1707 the governments of England and Scotland combined and as a result the military of England and Scotland likewise combined, with the exception of militias.

Due to the combining of forces, if you are seeking military records for your Scottish ancestors after 1707, you will need to turn your attention to the Public Record Office at Kew, England. Of course, for those situations in which Scotland and England were on opposite sides of the battlefield, you will find documents in the National Library of Scotland.

As mentioned, the militia remained separate from the official military and was predominantly used during the Napoleonic Wars. The records should be searched for in the Sheriff Court or County Council records of the sheriffdom or county from which your ancestor came.

Unlike many soldiers who fought in America, the military was an occupation for those in Great Britain, with the upper class serving as officers and the working class serving as soldiers. However, there was the opportunity to purchase a substitute.

Tip: You may find vital records such as marriages and births of children in some of the military records of officers.

Occupational Records

Craft guilds and burgess rolls offer information, often of a familial nature, and should be sought out. To work in a burgh—a town usually incorporated by charter that enjoyed to some extent the ability to self-govern—it was necessary that you join a guild of the Incorporated Trades. To do so, you had to be a

freeman, and you had to have a Burgess ticket. Once a member, it afforded the individual some protection in their job if not in other ways.

The Burgess Rolls trace back for centuries and were only eliminated when the government was reorganized in 1975 and the *burgh* was discontinued. The rolls identified those who could vote and serve their community.

One unique aspect of the right of a burgess ticket was that a woman could pass on her father's membership to her husband and a widow could likewise pass on her husband's membership to her sons. As a result, burgess rolls may mention how the men entered the rolls. Those entering through inheritance or marriage paid a lower fee than those moving from an apprenticeship. Outsiders, known as unfreemen, paid the highest fee if they wished to live and work in the burgh.

A guild brother, once accepted, was governed by the laws of that guild. As such some of the records for a guild may include details of those who were doing things not acceptable to the guild.

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Websites

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Wills and Testaments: <https://www.scotlandspeople.gov.uk/guides/wills-and-testaments>

Kirk Session Records: <https://www.scotlandspeople.gov.uk/guides/kirk-session-records>

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